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November 23, 1993

Mr. William F. Caton, Acting Secretary
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RE: In the Matter of Implementation of Section 3(n) and 332 of the Communications Act
Regulatory Treatment of Mobile Services, GN Docket No. 93-252

Dear Mr. Caton:

Attached are the original and four copies of the Reply Comments of Sprint Corporation in the matter referenced above.

Sincerely,

Jay C. Keithley
Vice President
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Attachment

JCK/mlm

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation Of Section 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint"), on behalf of the United and Central Telephone companies, Sprint Communications Co., and Sprint Cellular, hereby replies to comments filed in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned docket.[1]

I. INTRODUCTION

Before turning to the specific issues and arguments discussed in the comments, it is important to reflect upon the purpose of this proceeding. The Commission issued the NPRM in response to Title VI, Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993[2] (the "Act"), which amends Sections 3(n) and 332 of the Communications Act. The Act directs the

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1. In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services, GN Docket No 93-252, Notice of Proposed Rule Making, FCC 93-454, released October 8, 1993.

2. Pub. L. No. 103-66, Title VI, §6002(b), 107 Stat. 312, 392 (1993). Provisions of the Act shall be referred to as "Revised Section".

Commission "to review its rules and regulations to achieve regulatory parity among [mobile radio] services that are substantially similar"[3] and to adopt "uniform rules . . . to ensure that all carriers providing such services are treated as common carriers under the Communications Act of 1934."[4]

The language employed by Congress is simple and unambiguous. Likewise, the reason Congress found it necessary to adopt the Act is simple and unambiguous:

> Under current law, private carriers are permitted to offer what are essentially common carrier services, interconnected with the public switched telephone network, while retaining private carrier status. Functionally, these "private" carriers have become indistinguishable from common carriers but private land mobile carriers and common carriers are subject to inconsistent regulatory schemes. . . . The Committee finds that the disparities in the current regulatory scheme could impede the continued growth and development of commercial mobile services and deny consumers the protections they need if new services such as PCS were classified as private.[5]

Obviously, Congress is concerned that continued disparate regulatory treatment of private and common mobile radio service providers would unduly influence the marketplace and consumer choices would be determined more by regulatory constraints than by true competition in the marketplace. Thus, the Act seeks to ensure that all providers of similar mobile radio services are given the same regulatory classification. With that

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3. H.R. Rept. No. 111, 103rd Cong. 1st Sess. 1993, at 259 ("House Report").

4. Id. [Emphasis supplied.]

5. House Report at at 259-60.

Congressional imperative firmly in mind, the arguments and issues raised in the comments can be placed in the proper perspective.

II. DEFINITIONAL ISSUES

In the NPRM, the Commission sought comment on the proper interpretation of the elements that make up the definition of Commercial Mobile Service ("CMS"): "for profit," "interconnected service," and "available to a substantial portion of the public." The Commission also sought comment on the appropriate interpretation of Private Mobile Service. Most of the issues that surfaced in the comments pertain to the interpretation of "interconnected service" and Private Mobile Service. Several[6] of the commenting parties ignore Congressional intent to put an end to disparate treatment of providers of similar mobile radio services. These parties offer tortured arguments designed to prolong the existing patchwork of regulatory classification that Congress clearly intended to eliminate.

For example, Pagemart, Inc., a paging provider, argues that it does not provide interconnected service because it does not provide the subscriber direct access to the public switched network ("PSN"). Pagemart, Inc. argues that this is not

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6. Sprint does not believe that TRW Inc., Motorola, Inc., and STARSYS Global Positioning, Inc. should be included among the group of commenters referenced above. Each of these parties argued that the Commission should continue to regulate space segment licensees as common carrier or non-common carriers on a case-by-case basis, depending on whether the carrier was reselling to the public or merely making space available to resellers. This is the one instance where Congress explicitly recognized that disparate treatment might be appropriate. See, Revised Section 332(c)(5).

interconnected service in the statutory sense and that paging should be classified as Private Mobile Service.

The American Mobile Telecommunications Association, Inc. ("AMTA") argues that Congress intended an expansive definition of Private Mobile service, such that, even if a provider meets the statutory definition of CMS, the provider would nevertheless be classified as private, if the service is not the functional equivalent of CMS. Accordingly, AMTA concludes that the only existing private service that should be reclassified to common carrier status is wide area SMR service.

Nextel Communications, Inc. ("Nextel") argues that paging service should be classified as CMS because "store and forward" technology is interconnected and the functional equivalent of CMS. Somewhat surprisingly, Nextel then argues that Congress intended a broad, expansive definition of Private Mobile Service and to continue to allow numerous mobile service providers to be classified as private.

None of these arguments is persuasive or reflective of Congressional intent. Rather, as Sprint stated in its comments, the Congressional intent can only be realized through a broad definition of "interconnected service" that includes any service the use of which provides access to the PSN. Whether or not the service is real-time or two-way or provides direct or indirect access is relevant to what a potential user might pay for the service, but is irrelevant for purposes of regulatory classification.

Additionally, Private Mobile Service must be interpreted narrowly. A service that meets the statutory definition of CMS is CMS. Both the plain language of the Act and its legislative history make clear that there can be no justification for the interpretation advocated by some commenters that a service could explicitly meet the statutory definition of CMS, but be classified as something else based upon a subjective determination of what is functionally equivalent.

Many commenting parties, notably Paging Network, Inc. ("PageNet"), substantially agreed with Sprint's positions on the definitional issues. PageNet, which holds over 470 private carrier paging licenses,[7] acknowledges that:

> [The] FCC's proposals will quite likely reclassify either PageNet's offering of private or common carrier facilities, and change the regulatory structure under which either its common or private services are currently offered.[8]

Nevertheless, PageNet states that "paging carriers come within the definition of commercial mobile service . . . ."[9]

As to the definition of "interconnected service," PageNet contends that "all mobile services which either originate or terminate on the public switched network are interconnected for purposes of Section 332(d)."[10] While noting that such a

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7. PageNet at p. 2.

8. Id.

9. Id. at p. 1.

10. Id. at p. 5.

definition will encompass paging services, PageNet goes on to explain that regulating paging (and thus, implicitly, store and forward, one-way and non-real time services) as CMS was the intent of Congress, as demonstrated by the fact that Congress explicitly grandfathered private status for existing private paging licenses for three years.[11] If Congress had not intended to include paging service within the definition of CMS, no such grandfather provision would have been necessary.

The langauge of the Act and Congressional intent in this regard are clear, as is the Commission's obligation under the Act. The Commission must reject the interpretation offered by those who would have the Commission ignore the clear meaning of the Act. The Commission must adopt an expansive definition of CMS and of its constituent elements.

III. FORBEARANCE

Most commenters agreed with Sprint that the Commission should forbear from imposing most Title II obligations on CMS providers.[12] A few, however, argued either that forbearance should not apply to affiliates of dominant carriers or that other safeguards, such as structural separation, should be imposed on affiliates of dominant carriers.[13]

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11. Title VI, Section 6002(c)(2)(B) of the Act.

12. See e.g., BellSouth at pp. 28-31, Cellular Telecommunications Industry Association at pp. 25-35, and Motorola at pp. 17-18.

13. See e.g., Comcast Corporation at pp. 12-15 and Nextel Communications, Inc. at pp. 23-24.

No additional safeguards are necessary at this time and forbearance should apply equally to all CMS providers. While it is still too early to predict with confidence, the advent of PCS and the growth of other CMS services bodes well for a robustly competitive market place in the near future. This competitive marketplace, along with the Commission's existing panoply of dominant carrier regulation, including the affiliate transaction rules adopted in CC Docket No. 86-111, should be more than adequate safeguards against discrimination and cross-subsidization. If developments indicate additional regulations are needed, the Commission will be able to craft more finely tuned rules at that time.

IV. RIGHT TO INTERCONNECT

A substantial point of contention in the comments concerns whether CMS providers must provide interconnection. Given the express language of the Act, Sprint does not believe the debate is warranted. The Act provides that all CMS providers are common carriers.[14] Section 201 of the Communications Act, from which the Act does not permit the Commission to forbear, empowers the Commission to order common carriers to provide interconnection.[15] Thus, should the Commission determine that interconnection among CMS carriers is warranted, it can order interconnection. At present, the Commission has no record upon which to make such

14. See, Revised Section 332(c)(1)(A).

15. See, Revised Section 332(c)(1)(A).

a determination. Until such a record can be developed, the Commission should withhold its judgment in this regard.

V. STATE REGULATION

The Commission sought comment on the procedures needed to implement the provisions in the Act that require states to apply for Commission permission to reassert rate and entry regulation, or to impose new rate and entry regulation on CMS providers. The Congressional intent on this issue is very clear. State rate and entry regulation was preempted "[t]o foster the growth and development of mobile services that, by their nature, operate without regard to state lines."[16] Accordingly, states must carry a heavy burden to obtain permission to reassert existing regulation or apply new regulations. Sprint agrees with those commenters advocating such a heavy burden.[17]

VI. EQUAL ACCESS

The Commission sought comment on whether PCS licensees should be subject to equal access obligations similar to those imposed upon LECs. As with forbearance, Sprint believes it is premature to impose equal access obligations on PCS licensees at this time. It is too early to determine whether or not PCS will be a robustly competitive service or if a PCS-related bottleneck will develop. However, if PCS becomes robustly competitive and a bottleneck does not develop, which Sprint believes will be the

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16. House Report at 260.

17. See e.g. McCaw Cellular Communications, Inc. at pp. 23-28.

case, Sprint would argue that equal access obligations for competitive PCS services may not be necessary.[18]

VII. DISPATCH

The Act continues the prohibition on existing common carriers providing dispatch service. However, the Act granted the Commission authority to terminate this prohibition.[19] Numerous parties argued that the ban should be lifted and no one filed comments to the contrary.[20] Sprint agrees that the time is ripe to allow CMS providers previously classified as common carriers to provide dispatch service.

VIII. CONCLUSION

The Commission should implement a CMS regulatory scheme that provides like regulatory classification for like mobile radio services. Only in this fashion will the Congressional intent to foster a competitive CMS marketplace, unfettered by regulatory classification, be realized. Accordingly, the Commission should interpret "for profit," "interconnected service," and "available to a substantial portion of the public" very broadly. Private Mobile Service should be narrowly interpreted such that a service that either explicitly meets the statutory definition of CMS or that is the functional equivalent of CMS will not be classified

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18. See e.g., .

19. Revised Section 332(c)(2).

20. See e.g. Rochester Telephone Corporation at p. 13 and Telocator at p. 16.

as private. Furthermore, the Commission should forbear from enforcement of most Title II obligations of all CMS providers.

Respectfully submitted,

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November 23, 1993

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 23rd day of November, 1993, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Reply Comments of Sprint Corporation" in the Matter of Implementation of Section 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services, GN Docket No. 93-252 filed this date with the Acting Secretary, Federal Communications Commission, to the persons listed on the attached service list.

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